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**PUC DOCKET NO. 51415
SOAH DOCKET NO. 473-21-0538**

**APPLICATION OF SOUTHWESTERN § PUBLIC UTILITY COMMISSION
ELECTRIC POWER COMPANY FOR §
AUTHORITY TO CHANGE RATES § OF TEXAS**

COMMISSION STAFF'S EXCEPTIONS TO THE PROPOSAL FOR DECISION

Respectfully Submitted,

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I. INTRODUCTION

Staff is grateful for the reasoned consideration of the Administrative Law Judges (ALJs). This proceeding presented many nuanced issues, and the ALJs have carefully considered each of the issues in this proceeding. However, Staff respectfully excepts to limited portions of the proposal for decision (PFD). Specifically, Staff excepts to the PFD’s rejection of Staff’s proposal for a reduction of return on equity (ROE) because of poor reliability and Staff’s recommendation to improve reliability by requiring Southwestern Electric Power Company (SWEPCO) to hire an independent consultant to review its transmission system because of a cascading transmission outage that occurred with no warning on a normal summer day and affected a large part of northeast Texas but not SWEPCO’s service area in other states. In addition, Staff excepts to the PFD’s recommendation to reject Staff’s recommendation to adopt a four-year trim cycle for distribution vegetation management that SWEPCO’s own witness testified was necessary. Staff additionally excepts to the PFD’s recommendation to adopt SWEPCO’s gradualism proposal. Finally, Staff’s other adjustments to SWEPCO’s expenses, as detailed below, should be adopted.

II. RATE OF RETURN

A. Return on Equity Reduction and Independent Consultant

First, Staff does not except to the ALJs recommendation of a 9.45% ROE for SWEPCO before consideration of the factors required by Public Utility Regulatory Act § 36.052. However, Staff excepts to the ALJs’ exclusion of Staff’s recommended ROE 12.5 basis point reduction which should be applied to the ALJs’ 9.45% recommended ROE, as well as Staff engineer John

Poole's related recommendation that SWEPCO retain an independent consultant to review its transmission system.¹

In support of exclusion of the ROE adjustment and proposal that SWEPCO retain an independent consultant to review SWEPCO's transmission system, the ALJs highlight that the August 18-19, 2019 cascading transmission system outage (Outage) was a one-time event.² The ALJs also discuss the fact that the vine which initiated the Outage was aerially examined in April, months prior to the outage, and had significant clearance to the conductor which was later contacted.³ Respectfully, while the ALJs are correct that the cascading outage can be considered a single event, this single event was not the result of a single vine and a single line. Rather, the Outage involved multiple instances of vegetation contact with multiple lines – not one, but four instances of vegetation contact with four different transmission lines.⁴ As such, this “single event,” is in reality, multiple events which resulted in a catastrophic outage for customers of both SWEPCO and SWEPCO's wholesale electric cooperative customers living in a large area of northeast Texas who depend on competent and attentive vegetation management and transmission system maintenance, and is indicative of SWEPCO's systematic complacency regarding its transmission system.

The ALJs acknowledge SWEPCO's trend of worsening transmission reliability system average interruption frequency index (SAIFI) and system average interruption duration index (SAIDI) scores, noting that it is “troubling”⁵ and also note that SWEPCO failed to meet the Commission's distribution SAIFI standard for the test year ending March 2020 and the Commission's distribution SAIDI standard consistently over the past nine years.⁶ Further, in the context of their later recommendation in the PFD to grant an additional \$5 million to SWEPCO for its distribution vegetation management, the ALJs specifically state that “SWEPCO's service reliability is lacking and should improve through increased vegetation management.”⁷

¹ PFD at 145.

² *Id.*

³ *Id.*

⁴ See references to Events 1, 2, 5, and 7, Tr. 526:23-527:8 (Boezio Direct) (May 20, 2021).

⁵ PFD at 145.

⁶ *Id.* at 162-163.

⁷ *Id.* at 166.

Staff believes that merely granting SWEPCO additional funding for its distribution vegetation management as has been done in the past will not send the proper message in light of the “tip-of-the-iceberg” Outage which led to a lack of power for a large part of northeast Texas, nor will it ensure that vegetation management funds will be spent on vegetation management for SWEPCO’s transmission system. Given SWEPCO’s declining SAIDI and SAIFI scores, there is no reason to believe that the additional funds for distribution vegetation management will ensure that any of the preexisting significant transmission system problems which caused the Outage, including aging transmission lines and a dubious lack of transmission system vegetation trimming on numerous lines, will be resolved for SWEPCO’s customers and lead to increased service reliability. Despite the Outage being a “single event,” these issues will continue to exist if they are not addressed.

The ALJs agree with SWEPCO and Staff that a compliance docket should be opened to examine SWEPCO’s distribution vegetation management practices and spending.⁸ However, this recommendation does not go far enough and was previously adopted in the final order in Docket No. 46449 for SWEPCO’s targeted distribution vegetation management.⁹ The employment of an independent consultant would not only ensure that SWEPCO’s vegetation management practices are examined, but would also ensure that facilities, such as 50 year-old and older transmission lines that Staff engineer John Poole described in his testimony,¹⁰ would be evaluated for replacement. It would ensure that the millions of dollars in vegetation management funds provided to SWEPCO by ratepayers would be appropriately spent and that customers would not suffer significant breaks in service reliability.

In light of SWEPCO’s sustained failure to adequately manage vegetation on its transmission system and its questionable overall maintenance of that system, as shown by its worsening SAIDI and SAIFI scores and the cascading Outage of August 2019, the Commission should adopt a 12.5 basis point reduction to ROE and order SWEPCO to hire an independent contractor to promptly conduct a comprehensive review of SWEPCO’s transmission system and make recommendations for needed improvements, including vegetation management practices,

⁸ *Id.*

⁹ *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 46449, Order on Rehearing at Finding of Fact 209 (Mar. 19, 2018).

¹⁰ Direct Testimony of John Poole, Staff Ex. 5 at 10:4-9 (Apr. 7, 2021) (Poole Dir.).

facilities replacement, and system protection.¹¹ In addition, the Commission should order a compliance docket in which SWEPCO is required to file reports regarding the hiring and use of the independent consultant, including the request for proposal to perform the work, a notification of the selection of the independent consultant, a timeline for the consultant's work, and the consultant's reports and recommendations.¹²

B. Cost of Debt

Staff excepts to the 4.18% cost of debt and inclusion of the remaining amortization of the Series I Hedge Loss sustained by SWEPCO in February 2012 recommended by the ALJs in the PFD.¹³ Staff does not dispute that the remaining amortization of the hedge loss falls within the test year as used for setting base rates. It is unreasonable and runs counter to solid policy, however, to force SWEPCO Texas ratepayers to continue to pay for the annual amortization for significantly longer than that amortization will remain on SWEPCO's books.

The amount of remaining amortization pales in comparison to the full amount of amortization of the loss and the amount that SWEPCO Texas ratepayers will be responsible for many years in the future, until SWEPCO brings its next base rate case before the Commission. As Staff provided in its initial and reply briefs, the Series I Hedge Loss was incurred in February 2012 and will be fully amortized in January 2022.¹⁴ As of right now, SWEPCO ratepayers have already paid for 97% of this hedge loss from 2012. It would be unreasonable to ask for SWEPCO ratepayers to continue paying off this decade-old loss—likely for years—after it has been fully recovered. The ALJs state that it would be inappropriate to exclude a single item from the cost of debt without considering other potential changes which could occur post-test year. The fact remains that SWEPCO proposed other financial known and measurable adjustments to the test year (that occurred sometime in the rate year) when it benefitted SWEPCO. This change needs to be made to ensure that ratepayers do not significantly overpay for a hedge loss from 2012 that ratepayers have already paid 97% over the last ten years. The correct cost of debt for

¹¹ *Id.* at 12:11-15.

¹² *Id.* at 12:15-20.

¹³ PFD at 9.

¹⁴ Commission Staff's Initial Brief at 43-44 (Jun. 17, 2021) (Staff's Initial Brief); Commission Staff's Reply Brief at 33 (Jul. 1, 2021) (Staff's Reply Brief).

SWEPCO, after removing the already amortized Series I hedge loss from February 2012, is 4.08%.

C. Overall Rate of Return

For the reasons discussed above, Staff excepts to the use of a 9.45% ROE as recommended by the PFD. Instead, Staff recommends that a 12.5 basis point reduction be applied to the PFD's recommended ROE for SWEPCO's poor vegetation management practices. Applying the ROE reduction results in an overall 9.325% ROE recommendation. When combined with Staff's recommended 4.08% cost of debt and the capital structure requested by SWEPCO and recommended in the PFD, Staff's recommended ROE results in an overall rate of return of 6.67%.

D. Financial Integrity ("Ring Fencing")

While Staff agrees with the ALJs that "the essentially uncontested [ring-fencing] provisions (Recommendation Nos. 1-2, 4, 7-12, and 14-15) should be adopted,"¹⁵ Staff specifically excepts to the ALJs' exclusion of recommended ring-fencing provision numbers 5, 6, and 13 from the proposed ring-fencing measures to be adopted.¹⁶

The ALJs cite SWEPCO witness Ms. Renee Hawkins' objections to four of Staff's proposed measures—namely, provision numbers 3, 5, 6, and 13—as support for their conclusion that these measures are not "reasonable and necessary for SWEPCO."¹⁷ The ALJs state that Staff "did not explain why the[se] specific provisions... [3, 5, 6, and 13] were appropriate for SWEPCO."¹⁸ For the reasons outlined in the Direct Testimony of Mark Filarowicz and for the reasons provided here, Staff believes that there are compelling, specific justifications why these ring-fencing provisions should apply to SWEPCO in this case. While Staff believes that all of the ring-fencing provisions recommended in Mr. Filarowicz's testimony have value, in the interest of limiting the number of contested issues in this docket, Staff will only except to the

¹⁵ PFD at 155.

¹⁶ *Id.*

¹⁷ *Id.* at 153-155.

¹⁸ *Id.* at 155.

exclusion of provision numbers 5, 6, and 13, which provide important and necessary protections to Texas ratepayers.

Recommendations 5 and 6

The ALJs recommended the exclusion of the proposed language below:

- Recommendation 5: No Cross-Default Provisions. SWEPCO's credit agreements and indentures will not contain cross-default provisions by which a default by AEP or its other affiliates would cause a default by SWEPCO.
- Recommendation 6: No Financial Covenants or Rating-Agency Triggers Related to Another Entity. The financial covenant in SWEPCO's credit agreement will not be related to any entity other than SWEPCO. SWEPCO will not include in its debt or credit agreements any financial covenants or rating-agency triggers related to any entity other than SWEPCO.

As discussed in Mr. Filarowicz's testimony, SWEPCO is one of many subsidiaries of AEP, one of the largest investor-owned electric public utility companies in the United States.¹⁹ AEP is parent company to vertically integrated utilities, transmission and distribution utilities, a transmission holding company, and subsidiaries providing generation and marketing services.²⁰ Given the number of subsidiaries intermingled with AEP's and SWEPCO's operations and finances, there exists significant risk that the default of AEP or one of its many subsidiaries could lead to default by SWEPCO, which would run directly counter to SWEPCO's obligation to provide reliable service at just and reasonable rates. A cross-default provision involving SWEPCO unreasonably places SWEPCO ratepayers at the mercy of risky and unnecessary contractual exposure and provides no benefit to Texas ratepayers; accordingly, cross-default provisions should be expressly prohibited.

Preventing financial covenants and rating-agency triggers in SWEPCO's debt or credit agreements from being related to any other entity further ensures that SWEPCO ratepayers will be insulated from potential risky business activities for which they receive no benefit.

Ms. Hawkins objected to these recommendations on the basis that cross-default provisions and rating agency triggers are unnecessary and would increase compliance costs.²¹ However, as the ALJs recognized in the context of their recommendation to adopt the other ring-fencing measures, "any increase in compliance costs is likely outweighed by the benefit to

¹⁹ Direct Testimony Including Errata of Mark Filarowicz, Staff Ex. 1 at 38-39 (April 7, 2021).

²⁰ *Id.* at 39-40.

²¹ PFD at 153.

SWEPCO and its customers of having the ring-fencing protections in place.”²² This same sentiment applies to Staff’s recommended ring-fencing provision numbers 5 and 6 and overrides Ms. Hawkins’s concerns.

Recommendation 13

The ALJs also recommended the exclusion of the proposed language below:

- Recommendation No. 13: No Inter-Company Lending and Borrowing Commitment. Except for any participation in an affiliate money pool, SWEPCO will not lend money to or borrow money from AEP affiliates.

Ms. Hawkins argues that this recommendation is too restrictive and that other inter-company lending and borrowing programs accessible by SWEPCO in certain circumstances would benefit customers.²³ However, Staff’s recommendation to prevent SWEPCO from lending or borrowing money from AEP affiliates protects SWEPCO ratepayers from the unreasonable and unnecessary risk of SWEPCO incurring financial hardship from unpaid debts owed to SWEPCO, as well as potential shortfalls in its own available resources. The omission of this ring-fencing provision would effectively allow SWEPCO to request that Texas ratepayers bear the burden of paying the costs resulting from lending and borrowing activities that increase SWEPCO’s risk profile.

Staff’s recommended ring-fencing provision numbers 5, 6, and 13, as proposed by Mr. Filarowicz, were included in electric utility base rate case final orders in Docket Nos. 49421²⁴ and 49831.²⁵ Therefore, Commission precedent supports inclusion of recommended ring-fencing provision number 5, 6, and 13. As a general matter and as discussed in Mr. Filarowicz’s testimony, it is important to remember how the ring-fencing provisions established in Docket No. 34077 effectively insulated Oncor Electric Delivery Company (Oncor) and its ratepayers from negative financial effects of the 2014 bankruptcy of Oncor’s parent company Energy Future Holdings. In that case, the Commission’s foresight to include ring-fencing provisions out of an abundance of caution allowed the state’s largest utility to continue to provide service at just and reasonable rates throughout one of the largest bankruptcy proceedings in the nation’s history.

²² *Id.* at 155.

²³ *Id.* at 154.

²⁴ *Application of CenterPoint Energy Houston Electric, LLC for Authority to Change Rates*, Docket No. 49421, at Findings of Fact 72-73, 83 (Mar. 9, 2020).

²⁵ *Application of Southwestern Public Service Company for Authority to Change Rates*, Docket No. 49831, at Findings of Fact 76-77, 88 (Aug. 27, 2020).

While we all hope that ring-fencing provisions will never need to be invoked for any Texas utility, we must acknowledge that they provide crucial protections to Texas ratepayers in the face of undesirable financial circumstances.

For all these reasons, Staff's recommended ring-fencing provision numbers 5, 6, and 13 are reasonable and necessary to protect SWEPCO ratepayers from risky and unnecessary business and financial activities that do not provide any benefit to Texas ratepayers.

III. EXPENSES

A. Distribution Vegetation Management Expenses and Program Expansion

Staff excepts to the PFD's recommendation that SWEPCO not be required to implement a four-year trim cycle for distribution vegetation management (VM). SWEPCO has had decreases in reliability in their past three base rate cases despite receiving additional funding for VM in all three instances.²⁶ The PFD attempts to throw more money at an issue, without providing actual solutions to that issues. Staff urges the Commission to require SWEPCO to adopt a four-year trim cycle to increase reliability and protect customers.

The PFD argues that the cost of a four-year vegetation trim cycle is too costly to customers and that a compliance docket along with possible enforcement actions against SWEPCO would suffice to resolve reliability issues.²⁷ However, Staff recommended a similar four-year cyclical vegetation management program in SWEPCO's last base rate case, Docket No. 46449,²⁸ and the PFD in that docket dismissed it as "aspirational" and like in the PFD in the current docket called the program cost prohibitive.²⁹ The effects of that decision can be seen in the years after SWEPCO's last base rate case was approved. In the two years following approval of SWEPCO's last base rates, both SWEPCO's forced outage distribution SAIFI and SAIDI scores increased substantially, showing that, though SWEPCO was given more money in their last base rate case for vegetation management, reliability to customers still decreased sharply.³⁰ SWEPCO's own engineering witness – Drew Seidel – testified that the four-year trim cycle that

²⁶ Direct Testimony of Drew Seidel, SWEPCO Ex. 10 at 10-11 (Apr. 7, 2021).

²⁷ PFD at 166.

²⁸ Docket No. 46449, PFD at 256.

²⁹ *Id.* at 257.

³⁰ Direct Testimony of Ramya Ramaswamy, Staff Ex. 2 at 6-7 (Apr. 7, 2021).

Staff engineering witness Ramya Ramaswamy recommended would be a reasonable cycle to manage vegetation on SWEPCO's distribution system.³¹

SWEPCO has argued that a four-year trim cycle would cost \$38.35 million dollars annually to implement and would therefore be too expensive.³² However, SWEPCO did not provide any analysis for a four-year trim cycle costing \$38.35 million, but instead SWEPCO made the assertion wholesale without demonstrating how it arrived at its cost for implementing a four-year trim cycle.

Staff urges the Commission to reject the PFD's recommendation that SWEPCO not be required to implement a four-year trim cycle for distribution VM. Instead, Staff urges the Commission to require SWEPCO to implement a four-year trim cycle for distribution vegetation management. Requiring this would lead to increased reliability on distribution circuits by forcing SWEPCO to consistently trim vegetation near or on those distribution lines.³³ This will increase reliability on distribution circuits and mitigate potential system outage duration and frequency. Therefore, Staff recommends that SWEPCO be required to implement a four-year trim cycle for distribution circuits in its service territory.

IV. REVENUE DISTRIBUTION AND RATE DESIGN

The PFD states that in its next base rate case, SWEPCO should present its rate change request such that its then-present revenues show the total present revenues inclusive of the TCRF and DCRF revenues.³⁴ Staff agrees with the ALJs. However, class's present revenues should be evaluated inclusive of TCRF and DCRF revenues in this case consistent with the Commission's decision in Docket No. 46449.³⁵ Overall, Staff excepts to the PFD's evaluation of class's present revenues in the instant proceeding without including TCRF and DCRF revenues and without requiring SWEPCO to calculate its proposed base rate increase inclusive of DCRF and TCRF revenues within this proceeding.

Staff additionally excepts to the ALJs decision to adopt SWEPCO's gradualism proposal.

³¹ Staff Ex. 2 at 13:17–14:11.

³² Staff Ex. 10 at 20.

³³ Ramaswamy at 13:20-14:7.

³⁴ PFD at 292.

³⁵ Direct Testimony of Adrian Narvaez, Staff Ex. 4 at 15:21-23 to 16:1-2 (Apr. 7, 2021).

A. Rate Moderation/Gradualism

The PFD argues that Staff's revenue distribution proposal is not supported by Commission precedent. However, movement to cost based rates is supported by both Commission rules and precedent. Staff's revenue distribution and gradualism adjustment avoid the possibility of rate shock while ensuring that rates move progressively towards the Commission's goal of having rates set at costs.³⁶ This approach reasonably recognizes that full movement to cost in one step would be harsh to particular classes, yet would recognize the results of the Commission determinations as regards the CCOSS, and gradually move rates to the cost-based level as required by 16 TAC § 25.234.³⁷ In contrast, SWEPCO's proposed gradualism adjustment, as recommended by the PFD, does not achieve significant movement towards cost for several classes within SWEPCO's CCOSS.³⁸ SWEPCO's rate moderation proposal results in rate increases for Cotton Gin, Oilfield Secondary, and Public Street and Highway Lighting that are well below the increases required to set just, reasonable, and equitable rates consistent with cost causation.³⁹

Staff proposes a multi-year phase-in mechanism that would allow for a gradual movement towards cost-based rates for all classes.⁴⁰ In Phase I, starting with the Commission approved CCOSS, revenue increases, net of TCRF and DRCR revenues, for any individual class would be capped at 43%.⁴¹ Then residual revenues for the rate classes subject to the 43% cap are reallocated proportionally among the classes within the rate bundle that are not subject to the 43% cap.⁴² For Staff's proposed CCOSS, the rate classes subject to the 43% cap in this proceeding are Cotton Gin, Oilfield Secondary Service, and the Public Street and Highway Lighting classes.⁴³

³⁶ Staff's Initial Brief at 74.

³⁷ Staff Ex. 4 at 26:5-8.

³⁸ Staff's Initial Brief at 72.

³⁹ *Id.*

⁴⁰ Staff Ex. 4 at 23:14-15.

⁴¹ *Id.* at 23:20-23.

⁴² *Id.* at 23:23 to 24:1-2.

⁴³ *Id.* at 24:2-4.

This process continues in Phases II through IV, so Phase II caps revenue increases for any individual rate class, net of changes in TCRF and DCRF revenues, at an additional 43% or at 86% net increase from present test-year base-rate related revenues.⁴⁴ Each of the phases rates would be effective a year after the previous phases rates.⁴⁵ The rates for all classes within the Residential, Commercial and Industrial, and Lighting rate bundles would all be set at cost during Phase II since for Staff's proposed CCROSS the net revenue increases for all classes within these bundles are below the cumulative 86% cap for Phase II.⁴⁶ One rate class, the Public Street and Highway Lighting class would be capped at a cumulative 86% net increase in Phase II, and the residual revenue amount, now less than in Phase I, would be allocated proportionally among the other classes within the Municipal rate bundle.⁴⁷

Similarly, Phase III rates would cap revenue increases for any individual rate class, net of changes in TCRF and DCRF revenues, another at 43% for a 129% net increase from present test-year base-rate related revenues.⁴⁸ Since the Public Street and Highway Lighting Class would still be above the cumulative Phase III 129% cap at Staff's proposed CCROSS, the residual revenue amount would again be allocated proportionally among the other classes within the Municipal rate bundle.⁴⁹ The residual revenue amount would still be less than in Phase I or Phase II.⁵⁰ Phase IV applies the same methodology as the previous phases and the revenue increases for any individual class are capped at a cumulative 172% net increase from present test-year base-rate related revenues.⁵¹ Since, the Public Street and Highway Lighting's cost-based net revenue increase is below 172% cap at Staff's proposed CCROSS, all rates would be set at cost by Phase IV.⁵²

⁴⁴ *Id.* at 24:10-14.

⁴⁵ *Id.* at 24:22, 25:9, 25:15.

⁴⁶ *Id.* at 24:13-16.

⁴⁷ *Id.* at 24:16-21.

⁴⁸ *Id.* at 25:1-4.

⁴⁹ *Id.* at 25:4-9.

⁵⁰ *Id.* at 25:7.

⁵¹ *Id.* at 25:10-13.

⁵² *Id.* at 25:13-15.

Staff's phase-in gradualism proposal is consistent with Commission precedent. The Commission has approved phase-in gradualism mechanisms similar to Staff's proposal for two large water utilities, SWWC Utilities Inc. and Undine Texas LLC.⁵³ Although no phase-in gradualism mechanism has ever been proposed for an electric utility, the methodology is reasonably applicable to electric utilities, and there is no good reason not to do so.⁵⁴

As explained above, rates in each phase of Staff's proposed multi-phased revenue distribution are based on the revenue requirement produced by the cost-of-service model and billing determinants that will be approved by the Commission.⁵⁵ In other words, although the revenue requirement for some classes changes during each phase as each class moves towards cost-based rates, the rates for each particular phase would be set to recover the overall Commission approved revenue requirement, just as if rates had been initially set at that level in this proceeding. For this reason, the PFD's assertion that Staff's proposal would result in SWEPCO foregoing an opportunity to recover its cost to serve its customers until the phase-in period is over is false.⁵⁶

Furthermore, as explained above, Staff's proposed phase-in gradualism mechanism limits rate increases to a 43% increase from present revenues for each phase. This approach is consistent with the Commission's decision in SWEPCO's last rate case, Docket No. 46449, to cap revenue increases at a roughly 43% increase from present revenues net of changes in TCRF and DCRF revenues.⁵⁷

V. REASONABLENESS AND RECOVERY OF RATE CASE EXPENSES

A. The Docket No. 47141 Issue Regarding CARD's RCEs

Staff urges the Commission to reject the PFD's treatment of CARD's rate case expenses related to Docket No. 47141. The PFD states that "The ALJs . . . recommend that CARD be

⁵³ *Id.* at 25:18-19.

⁵⁴ Staff Ex. 4 at 25:17-18; Tr. at 1433:19-21 (May 26, 2021) (Narvaez Redirect).

⁵⁵ Staff Ex. 4 at Attachment AN-2 to AN-7.

⁵⁶ PFD at 300-301.

⁵⁷ Staff Ex. 4 at 20:12-15.

allowed to recover \$2,500, but not \$6,321, related to Docket No. 47141.”⁵⁸ Staff takes exception to the recommendation of the ALJs that an additional amount of \$2,500 can be recovered for CARD’s Docket No. 47141 rate-case expenses.

As explained in the Supplemental Rebuttal Testimony of SWEPCO witness Lynn Ferry-Nelson:

“CARD submits its own rate-case expense testimony because it bears the burden of proving the reasonableness of its own expenses. But CARD does not recover its rate-case expenses directly from SWEPCO’s customers; CARD’s reasonable rate-case expenses are reimbursed by SWEPCO. It is SWEPCO that recovers CARD’s rate-case expenses from customers through the RCE Rider.”⁵⁹

Thus, there is a three-step process for **reimbursement** of CARD’s rate-case expenses: First, CARD must support the reasonableness of its requested rate-case expenses. Second, SWEPCO requests **recovery** of CARD’s expenses from its customers through the RCS Rider. Third, SWEPCO **reimburses** CARD for its reasonable rate-case expenses. It appears that these separate, but distinct steps are a source of misunderstanding in this case. More specifically, CARD and the ALJs appear to be conflating the concepts of SWEPCO’s separate **recovery** from ratepayers and its **reimbursement** to CARD.

The PFD presents the following findings of fact from the order in Docket No. 47141:

78. The parties agreed that SWEPCO would **recover** \$5,429,804.52 in rate-case expenses. This black-box amount includes **reimbursement** to CARD in the amount of \$1,086,322.14 through April 13, 2020. In addition, the black-box amount includes **reimbursement** to CARD for actual expenses incurred in this docket after April 13, 2020 but caps that **reimbursement** at \$2,500. (emphasis added)
79. SWEPCO and CARD agreed not to request any additional **recovery** for rate-case expenses incurred in this docket, in litigation before the Commission in Docket Nos. 40443 and 46449, and in Docket Nos. 48233 and 47533. (emphasis added)

⁵⁸ PFD at 323.

⁵⁹ Supplemental Rebuttal Testimony of Lynn Ferry-Nelson, SWEPCO Ex. 35 at 3:14-18.

These findings of fact together unambiguously explain that the black-box amount of \$5,429,804.52 is the only amount that SWEPCO can **recover** from its ratepayers under the terms of the stipulation.

As explained by the PFD, “CARD argues that Staff’s calculation of the adjustment is not accurate because it fails to account for the \$2,500 in rate-case expenses that SWEPCO was required to **reimburse** CARD pursuant to the settlement.”⁶⁰ Staff does not disagree that FOF No. 78 explicitly provides for **reimbursement** to CARD for up to \$2,500 of expenses incurred after April 13, 2020. However, it does not provide SWEPCO any additional **recovery** for that amount. At issue in this case is the amount to be **recovered** from ratepayers by SWEPCO. Therefore, Staff’s recommendation to exclude the full \$6,321 requested by CARD is consistent with the limitation placed on **recovery** of Docket No. 47141 expenses. CARD may believe that SWEPCO owes it \$2,500 more in **reimbursement** based on the agreement reached by the parties in Docket No. 47141, but **recovery** of the \$2,500 from ratepayers is clearly precluded by the order in that case. Therefore, the amount of rate-case expenses recommended by Ms. Stark is the correct amount, consistent with the Commission’s order in Docket No. 47141. Staff urges the Commission to adopt Ms. Stark’s proposal and disallow the recovery by SWEPCO of \$2500 for rate case expenses related to Docket No. 47141.

VI. CONCLUSION

Staff is grateful for the reasoned consideration of the ALJs. However, Staff excepts to limited portions of the PFD. In particular, Staff’s positions on distribution and transmission reliability, rate design, and ROE, as well as Staff’s other miscellaneous exceptions should be adopted.

⁶⁰ PFD at 322.

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on October 7, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Robert Dakota Parish
Robert Dakota Parish